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Reprinted from the London Times of December 22d, 1864.

NEW-YORK, 1865.

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FROM
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EVERT JANSEN WENDELL
1918

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To the Editor of The Times:

Sir,—Though it may be admitted that there is not much to complain of in the tone and temper of those portions of Mr. Lincoln's latest Message which touch on the topics of the international relations between England and America, there is a passage in that document which seems to me to call for some observation. We may afford to disregard the idle denunciations of popularity-hunting orators and the intemperate effusions of a democratic press, but it is not well to pass over altogether in silence serious errors in principle which find their way into the authoritative utterances of the head of a powerful State.

The sentence in the Message of Mr. Lincoln upon which I shall ask your leave to offer a few remarks runs as follows:—

"It is possible that if it were a new and open question, the maritime Powers, with the light they now enjoy, would not concede the privilege of a naval belligerent to the insurgents of the United States, destitute as they are, and always have been, equally of ships of war and of ports and harbours."

There is something not a little entertaining in the tone of compassionate toleration which is here adopted towards the benighted ignorance which is assumed to have led the uninstructed Powers of Europe into an unfortunate error. The principle here contended for—viz., that belligerent rights are divisible in their nature, and that such rights, so far as they partake of a maritime character, are not to be conceded to belligerents who are not in the enjoyment of the regular apparatus of naval warfare, is a doctrine for which I will venture to say no authority is to be discovered either in the principles of law or the practice of nations. To offer any lengthened argument against such a proposition would be to insult the intelligence of jurists. And were it not that I have seen this singular doctrine advanced by lawyers and politicians on the other side of the Atlantic, for whose character and abilities I entertain the highest respect, I should not have thought it worth while to attempt a refutation of so transparent a fallacy.

In the first place, if such a doctrine were at all sustainable, which it is not, it would have no application to the case of the Confederate States. To assert of these belligerents that they have no ships of war is untrue in fact, as the Monitors and rams which the Federal navy have at times captured and by which they have in their turn at other times been destroyed, sufficiently

demonstrate. To assent that the Confederate States "are, and always have been, destitute of ports and harbours" is a geographical misstatement of the most singular kind. The seaboard of the Confederacy is more extensive than that of the Federal Government. Their ports are at least as numerous, and probably more important than those of their adversaries. What Mr. Lincoln means, perhaps, is that which he does not say—viz., that these ports are sealed by the blockade. But who ever yet, in the annals of international law, heard of the pretension that a blockade, however efficient, deprived the blockaded Power of its rights as a maritime belligerent? England was not slow to insist upon her rights in the great revolutionary wars; but when Toulon and Brest and Antwerp and Emden were hermetically sealed by her blockading squadrons, was it ever pretended that France was not entitled to the privileges of a maritime belligerent in her relations with the neutral Powers? So, to take a more recent and yet more conclusive example, when the Allies had closed every port in the Black Sea and in the Baltic against the flag of Russia, what would the Government of the United States have said if it had been intimated to them that they would not be permitted to concede to Russia the rights of naval belligerents?

But the matter does not rest upon the mere negative testimony supplied by the absence of any precedent for such a doctrine. This very question has been definitely raised and solemnly adjudicated in the international forum. And, singularly enough, the decision has been pronounced by the American Government itself, and that decision, I need hardly say, was decisively against the very proposition for which they now seek to contend.

Attention has been recently called to a very important and instructive correspondence which passed between the Portuguese Government and that of the United States, arising out of the wars waged by the South American insurgents at the commencement of the present century. This correspondence is so peculiarly germane to the matter in hand as to deserve more particular notice than it has yet received. The papers (some extracts of which have been lately published in several English newspapers) will be found *in extenso* in the *American Executive Documents* (1st of September, 32d Congress, 1851-1852, vol. vi., Doc. No. 53, p. 161, *et seq.*) They are too long to copy at length into your columns, but are highly deserving of the attention of those who are interested in such questions. I will endeavour by a few extracts to give an idea of their scope and bearing.

It would be tedious to describe at length how the Government of Portugal in right of her Brazilian possessions came to be involved in the quarrel between Spain and her insurgent colonies in South America. It is sufficient for our present purpose to state that the war had arisen about the year 1816 between Portugal and the self-constituted Governments of Buenos Ayres

and the Banda Oriental Republic, under the Chieftainship of Artigas. It is hardly necessary to point out that these insurgent communities might be far more accurately described as "destitute of ships of war and of ports and harbors" than the Confederate States of America. Indeed, their whole maritime power consisted in the privateers which they armed, manned, and equipped in Baltimore and the other ports of the United States. M. Joseph Correa de Serra, the Portuguese Minister at Washington, addressed repeated remonstrances to the American Government on the subject of the depredations carried on by these cruisers, thus unlawfully equipped in the United States, upon the Portuguese commerce. The despatches of the Chevalier de Serra seem to have been the model on which those addressed by Messrs. Seward and Adams to the English Foreign-office have been framed. In one of his despatches he writes:—

"During more than two years I have been obliged by my duty to oppose the systematic and organized depredations daily committed on the property of Portuguese subjects by people living in the United States, and with ships fitted in the ports of the Union, to the ruin of the commerce of Portugal. I do justice to and am grateful for the proceedings of the Executive in order to put a stop to these depredations, but the evil is rather increasing. I can present to you, if required, a list of 50 Portuguese ships, almost all richly laden, some of them East Indiamen, which have been taken by these people during the period of full peace. This is not the whole loss we have sustained, this list comprehending only those captures of which I have received official complaints. The victims have been many more, besides violations of territory by landing and plundering ashore, with shocking circumstances. *One city alone on this coast has armed twenty-six ships which prey upon our vitals, and a week ago three armed ships of this nature were in that port waiting for a favourable occasion of sailing on a cruise.* Certainly, the people who commit these excesses are not the United States; nevertheless, they live in the United States and employ against us the resources which this situation allows them."

In another despatch the Portuguese Minister writes:—

"Obliged by my duty to inquire into the nature of the armed ships that have of late insulted the flag of my Sovereign, and committed incalculable depredations on the property of his subjects, I have found with sorrow multiplied proofs that many of them are owned by citizens of the United States, have been fitted in ports of the Union; and many of them have either smuggled into this country the goods so stolen from a nation in full peace and friendship with the United States, or entered the captured ships and cargoes by unlawful means in several ports of the Union. I am in duty bound to carry such facts before the courts of justice which your Constitution has provided. But I am alarmed at the thick crowd of individuals who are engaged in this iniquitous business. Not only those that may be supposed to par-

take directly and indirectly in the plunder and their friends, but also a vast number of people otherwise honest, who have the misfortune of believing that they do a meritorious act in supporting foreign insurrections, and are taught by some newspapers to look on these robberies as patriotic and praiseworthy. This class of persons, widely spread everywhere, many of them having it in their power to help the delinquents some way or other, oppose great difficulties to every prosecution instituted by a foreign Minister."

And again :-

"But, Sir, though the honorable and friendly course that this Government has adopted insures me of the punishment of the culprits in any case in which the existing laws can attain them, still I cannot be at rest on the fate of the commerce of the subjects of my Sovereign. It is impossible, though the courts of justice cannot attain them all, to dissemble the number of and the forces employed by the persons in the United States interested in this iniquitous pursuit of plundering the lawful property of an inoffensive friendly nation. The ultimate consequences of such a state of things must unavoidably be to spread immorality and corruption in your country, tarnish the fair character of your nation, and to excite feelings of bitterness and distrust towards her in the breasts of a Government and a nation which nature, it would seem, had destined by their situation to be always your friend, and a useful and advantageous one."

And now let me call the attention of your readers on both sides of the Atlantic to the following striking passage in one of the Chevalier de Serra's despatches :-

"Our case, Sir, is widely different to that of Spain; it admits of another and radical remedy. This remedy, I am persuaded, is in the power of this Government; consequently I am confident it will administer it, and by that means bind more closely our two countries, which these profligate people are striving as much as is in their power to alienate from each other. The insurgent Governments of Spanish America are in a state of civil war with their metropolis, and are in possession of extensive sea coasts and of a great number of ports. They have in consequence the means and the power of navigating, from which, and only from which, originate the means, power, and right of fighting by sea. In such case the law of nations allows the neutral Powers to keep their neutrality and to treat on an equal footing the vessels of both parties. This impartial and dignified course has been adopted in this civil war by the wisdom and justice of both our Governments, and the ships of both have been equally respected by the privateers of all these insurgent flags, with but rare exceptions. Only a pretended Artisan runs the seas, taking our ships and property, and it happens that this flag is the only one not entitled to the neutrality which, by the law of nations, may be allowed to the others. I can, in the capacity of Minister of my Sovereign, cer-

tify you solemnly, and officially, too, if necessary, that Artigas and his followers have been expelled far from the countries that could afford them the least means and power of navigating, and consequently have no right to fight by sea. What become, then, the privateers under this flag—the rights of privateers, according to reason and to every publicist, being but a partial delegation of the rights of the authority that gives him the commission? This phenomenon seems quite new in the history of the civilized world. Let us suppose that a Swiss flag and Swiss privateers made their appearance at sea, what would be the general astonishment? Where is the Swiss port from which they could take their departure and be fitted or refitted? Where the Swiss Court of Admiralty that could judge their prizes? If some other nation allows them the use of their ports and courts, she deserts by that act the ground of neutrality, becomes the ally offensive, making common cause with the Helvetic body by lending him the means he has not by himself of annoying his opponents. It is most certainly very far from the upright instructions of this Government that Baltimore or any port of the Union be in the above predicament. Still the wicked people of whom I complain make it so in fact. The Artigan flag, which has not a foot length of sea shore in South America where it can show itself, is freely and frequently waving it in the port of Baltimore; and even the Portuguese prizes already under the safeguard of the United States have been polluted by it every Sunday without intermission. Artigan cockades are frequently met with in that city in the hats of American citizens unworthy the honor of this name. How does it happen that in the time Artigas (if existing at all at this moment) is wandering with very few followers, lurking in the far inland forests near Corrientes, the port of Baltimore contains very often armed ships bearing his flag; and people born in the United States, who never saw the country where he lived, are found in that city wearing the badges of his service? No doubt can exist of the unlawfulness of such things, and of their direct opposition to the honorable intentions of this Government and to the law of nations. The law enacted the 3d of this month, supporting the supreme Executive in the employment of the national forces to suppress piracy, such as it is defined by the law of nations, comprehends this branch of it. But my mentioning this law is only incidental; I rely much more on the expedients that the justice and wisdom of the Executive may inspire to him than in anything that may occur to my mind. If the Artigan flag is once declared illegal, and the prizes made under it acts of piracy, all occasions of bitterness and distrust are done away, and our two nations are immediately in those relations, each to the other, that the nature of their situations naturally calls for—perpetual amity on both sides, and friendly, mutual, advantageous intercourse for ever. Your country possesses almost all the industry in arts that exists in the two Americas, and has taken such an early start, with such rapid strides, that many centuries will pass before she loses the advantago. Mine possesses the richest productions in the world. No territorial jealousies can exist among them; no rivalry

or concurrence can ever happen in the articles of their commerce. Our two Governments are the only ones of America that are acknowledged by all mankind, and each of them will be always the paramount Power in his respective moiety of this hemisphere. When America is to become of age and be ruled by a system of herself, these two Governments will always be the directorial ones of the whole system. How many ponderous reasons these of mutual regard and good intelligence, even without any entangling treaties or alliances? But, thanks to the piratical Baltimore patriotism, a degree of distrust has very naturally taken place in the hearts of the Portuguese, which I am confident the just proceedings of your Government, chiefly this which I now request, will allay and extinguish. Permit me, Sir, to give a just idea of what these feelings must be in the present moment. If Tecumseh, in the war of Tippecanoe, had given privateer commissions to Portuguese subjects against the commerce of the United States, and those privateers had taken so many American ships and plundered so many millions value as the Baltimoreans have now taken Portuguese—if they had carried the prizes to ports of the Crown of Portugal, finding there so many abettors as the present pirates have unhappily found in the ports of America—if they had entered your ports and received there all the offices of hospitality under the Portuguese flag, and immediately out of them had hoisted Tecumseh's flag and captured the ships going out of the same ports—if they had made descents on the territory of the United States, plundered public and private property to considerable amount, murdered the people, insulted and maimed the magistrates, &c., what would be the sentiments of every good American towards Portugal and Portuguese—at least until the moment that my Government would effectually put an end to such acts of his subjects? Very happily the Federal Courts seem of late to have understood and followed the sentiments of your Government; and I rejoice to have it in my power to announce to mine the restitution to the lawful owners of the ships *Monte Allegro* and *Loisidale Feliz*. But you see clearly that the right opinions of particular Judges and private lawyers are but a partial and too precarious remedy; Government only declaring the unlawfulness of the pretended Artigan flag can put an end to these evils and restore by that course of mutual intimacy between our two nations. This is what I have the honor to put under his eyes with the most perfect confidence in his feelings and wisdom."

Now, it is impossible to conceive how the proposition which Mr. Lincoln thinks the maritime Powers, "with the light they now enjoy," would be disposed to embrace could be more neatly raised or more ably stated than it is in the foregoing despatch of the Portuguese Minister. It will be seen that this despatch contains a categorical demand that the United States should refuse belligerent maritime rights to the flag of the Banda Oriental Republic, on the express ground of the undoubted fact that Artigas and his horde of adventurers (who hardly deserve the

title of a Government) "are destitute of ships and forts and harbors." But what was the answer of the American Government? Did they acquiesce in this reasoning or accede to this demand? The answer of the American Government appears at an early stage of the correspondence, and to this reply they adhered, through a discussion extending over thirty years. The despatch, bearing the honored signature of John Quincy Adams, is as follows:—

"JOHN Q. ADAMS TO THE CHEVALIER CORREA DE SERRA.

"Department of State, March 14, 1818.

"SIR,—Your letter of the 8th inst., complaining of the capture of three Portuguese ships by privateers, said to be fitted out in the United States, manned by American crews, and commanded by American captains, though under colors other than those of the United States, has been received.

The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by capture, over which the United States have neither control nor jurisdiction. For such events no nation can in principle nor does in practice hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

"The documents to which you refer must of course be *ex parte* statements, which in Portugal or Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States there are courts of Admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners should it also be brought within our jurisdiction, and found upon judicial inquiry to have been taken in the manner represented by your letter. By the universal laws of nations the obligations of the American Government extend no further.

"Be pleased, Sir, to accept the assurance, &c.,

"JOHN Q. ADAMS.

"The Chevalier Correa de Serra."

I believe that it would be impossible to state the true principles applicable to this question more accurately than they are set forth in this despatch of Mr. Adams. Those who have done me the honor of following the argument which I have attempted

on this subject in former letters will observe that the conclusions here stated are precisely those for which I have contended. They may be summed up in three important and unquestionable propositions:—

1. That it is the duty of a neutral Government to enforce, as far as it can, the observance of its own laws for the preservation of its neutrality.

2. That if its honest efforts should in any instance be unavailing, and its vigilance should be eluded, the neutral Government is not responsible for the consequences.

3. That in the case of cruisers illegally equipped, the duty and the responsibility of the neutral Government are exclusively confined to such redress as can be afforded over property brought within its jurisdiction; and that, consequently, all claims to compensation for injuries suffered beyond the jurisdiction are wholly inadmissible.

It is obvious what an important bearing these principles, thus fortified by the authority of the American Government, have upon the idle menaces of claims to compensation against England for the captures made by the Alabama. That, however, is a matter collateral to the present discussion. I may be permitted, however, to observe, in passing, that if the American Government rely on the escape of three or four armed cruisers from our ports as a conclusive evidence of the laches of the English Government in enforcing the neutrality of the Crown, their own history, as displayed in this correspondence, might teach them to judge of others by a more lenient standard. Far be it from me to impugn the sincerity of the American Government in the neutrality they professed in the contest between Spain and Portugal and the South American Republics; but at least we may be permitted to point out that if it was as honest in intention as that of England in the present struggle, it was certainly in practice much less effectual. No American Minister can truly say of us what the Portuguese Minister in 1819 was able without contradiction to affirm of America, that in two years 26 privateers had left one single port of the United States to prey on the commerce of their allies. We may not have been altogether successful in our efforts to enforce the law; but, as compared with the American Executive, we may reckon ourselves lucky indeed.

But to return to the principal topic of the discussion. After a review of this correspondence, what are we to think of the conduct of the American Government in the complaints which they are thus perpetually urging against the English nation? In 1818 they conceded to Artigas and a crew of political adventurers, without a fleet and without a port—we might safely say

without a cockboat of their own—complete maritime belligerent rights; they extended to the cruisers which they contrived to equip in other places their hospitality and the protection of their laws; they treated them in every respect as on an equality with the fleets of the ancient Governments of their allies; and then, forsooth, they make it a great matter of complaint that we do the same, or, perhaps, somewhat less, for a Power which divides with them in an equal struggle half the continent of North America! I do not think that in the face of such precedents, established by the authority of American Government itself, the querulous reclamations of Messrs. Lincoln, Sumner, and Seward, will redound greatly to the credit of the sagacity or good faith of American statesmanship. It is the business of wise and honest rulers to abstain from advancing claims which they ought to know to be unfounded, and to refrain from the assertion of grievances which it is impossible to sustain. The mass of the people naturally take the law from those whose function it is to know and to declare it. To falsify the international record is to delude the people to their own destruction, to breed animosities between nations by creating a needless resentment begotten out of fancied injuries. I believe that in spite of the mischievous nonsense to which the politicians of both the contending parties persist in giving currency, the history of nations does not furnish an example of a neutrality more honestly intended, or more effectually enforced than that which Great Britain has observed throughout the American struggle. Those who value above all things the peace of the world, will think no labor illspent in refuting fallacies which are pregnant with future evil. It is for this reason that I have trespassed at this length upon your patience, for it is through your columns alone that I can hope to address those among the American people who are accessible to the influence of reason and of truth, and appeal to those principles which, having been themselves the first to establish, their politicians would now incite them to repudiate.

Temple, Dec. 21.

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